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FM AMEMBASSY BANDAR SERI BEGAWAN
TO SECSTATE WASHDC PRIORITY 3548

C O N F I D E N T I A L BANDAR SERI BEGAWAN 000499

FOR L/EAP AND EAP/MTS

E.O. 12958: DECL: 09/27/2016

TAGS: PREL BX

SUBJECT: REQUEST FOR SUGGESTION OF HEAD OF STATE IMMUNITY
IN LAWSUIT AGAINST BRUNEI'S SULTAN AND CROWN PRINCE

REF: (A) BANDAR SERI BEGAWAN 422 (B) STATE 159940

Classified By: Ambassador Emil Skodon, reasons 1.4 (b, d)

¶1. (C) As instructed, Ambassador shared with Foreign Minister II Lim Jock Seng the points in para 8 of ref B regarding the case of Gligorov et al v.s. Sultan of Brunei et al. After considering those points and consulting with the U.S. law firm retained by the Sultan and Crown Prince (Cravath, Swaine, & Moore), the Government of Brunei (GOB) decided to submit a diplomatic note asking the USG to file a suggestion of Head of State immunity with the New York court. FM II Lim delivered the third party note directly to Ambassador. Original plus attachments are being pouched to Department (EAP/MTS).

¶2. (C) The text of the note is reproduced in the final para of this cable. It contains reference to a number of other cases in which the GOB believes a suggestion of immunity was issued, including Marketic v.s. Kaliber Talent Consultants, in which the Sultan of Brunei was named as a defendant. As one of the attachments to its note, the GOB included copies of a July 25, 1997 letter from Acting Legal Adviser Matheson to Assistant Attorney General Hunger asking the Justice Department to submit a suggestion of immunity for the Sultan in the Marketic case, and an August 14, 1997 DOJ submission to the court suggesting such immunity. Other attachments to the note include copies of the Gligorov complaint, the GOB proclamation naming the Crown Prince as heir to the throne, and the Joint Statement issued during the Sultan's 2002 meeting with President Bush at the White House.

¶3. (C) Lim explained that he was delivering the note directly to Ambassador because the Sultan had decided not to involve the Brunei Embassy in Washington at this stage, due to his desire to maintain the confidentiality of his exchanges with the USG on this subject for as long as possible. Ambassador explained that the request contained in the GOB note would become public knowledge if a suggestion of immunity was actually submitted to the court by DOJ, but that the USG might wait to see if service of process was ever made before making such a submission. Lim understood both points and said he had asked the Sultan's U.S. law firm to stay in close touch with the Department regarding the Gligorov complaint.

¶4. (C) Text of GOB diplomatic note follows:

The Ministry of Foreign Affairs and Trade of Brunei Darussalam presents its compliment to the Embassy of the United States of America in Bandar Seri Begawan and has the honour to request the latter to convey the request of the Government of Brunei Darussalam ("Brunei") that the United States of America suggest the immunity of both His Majesty Sultan Haji Hassanal Bolkiah, the Sultan of Brunei Darussalam, and His Royal Highness Haji Al-Muhtadee Billah, the Crown Prince of Brunei, in connection with a lawsuit filed against them.

On June 26, 2006, a lawsuit was commenced against His Majesty and the Crown Prince in the United States District Court for the Southern District of New York. A copy of the complaint captioned, Gligorov v. His Royal Majesty Sultan Haji Hassanal Bolkiah (Sultan of Brunei), et al., No. 06-4905 (S.D.N.Y. filed June 26, 2006), is attached as Exhibit A. By way of thirteen separate legal claims, the complaint alleges that His Majesty and the Crown Prince failed to pay for certain investigative and other services allegedly performed on their behalf by a citizen

of Slovenia over the last several years. As such, the suit ostensibly does not involve any alleged misconduct that took place in the United States.

It is the Ministry's understanding that under customary rules of international law, recognized and applied in the United States, the head of state of a friendly foreign government, his immediate family members, its foreign ministers, and those designated by the head of state as members of his official party, are immune from the jurisdiction of the U.S. Federal and State Courts. See e.g., *Lafontant v. Aristide*, 844 F. Supp. 128, 131-32 (E.D.N.Y. 1994), appeal dismissed, No. 94-6026 (2d Cir. 1996); *Leutwyler v. Queen Rania Al Abdullah*, No. 00 Civ. 5485, 2001 WL 893342, at *1 (S.D.N.Y. Aug. 8, 2001); *Estate of Silme G. Domingo v. Marcos*, No. C82-1055V, 1983 LEXIS 20372, at *5 (W.D. Wash. July 14, 1983); *Tachiona v. Mugabe*, 169 F. Supp. 2d 259, 297 (S.D.N.Y. 2001). Indeed, the United States suggested the immunity of His Majesty in connection with a lawsuit filed against His Majesty in 1998. See *Marketic v. Kaliber Talent Consultants, Inc.*, No. CV97-0356, 1998 WL 1147140 (C.D. Cal., Mar. 15, 1998). The suggestion of immunity letter submitted by the United States in that case is attached as Exhibit B.

His Majesty remains the supreme executive authority and Head of State of Brunei, in which capacity he has served since ascending to the throne on October 5, 1967. His Majesty also serves as the Prime Minister, Defense Minister, Finance Minister, and Head of the Religion of Brunei. His Majesty's son, the Crown Prince, is of course the direct successor and heir to the throne of Brunei by virtue of the Succession Regency Proclamation, which is attached as Exhibit C. The Crown Prince was proclaimed on August 10, 1998, and is in line to become the 30th Sultan of Brunei. The Crown Prince is also the Senior Minister at the Prime Minister's Office, which makes the Crown Prince the second highest ranking official in the Brunei government.

The Ministry of Foreign Affairs and Trade of Brunei Darussalam, therefore respectfully request that the United States suggest the immunity of His Majesty and the Crown Prince, as it has done in similar circumstance for heads of state and their immediate family members. See e.g., *Suggestion of Immunity*, United States, on behalf of the President and First Lady of the Republic of the Philippines, in *Estate of Silme G. Domingo v. Marcos*, No. C82-1055V, 1983 LEXIS 20372 (W.D. Wash. July 14, 1983) ("Mrs. Marcos is a member of the immediate family of President Marcos and, therefore, partakes of his immunity ..."); *Kilroy Windsor*, No. C-78-291 slip op. (N.D. Ohio, Dec. 7, 1978) (holding that Prince Charles, as heir apparent to the throne of England, is entitled to head of state immunity in accordance with State Department suggestion of immunity); *Kline v. Kaneko*, 535 N.Y.S. 2d 303, 304 (Sip. Ct. N.Y. 1988) (suggestion of immunity letter filed on behalf of, Paloma Cordero De la Madrid, the wife of the President of Mexico, requires dismissal of case: "[u]nder general principles of international law, heads of state and immediate members of their families are immune from suit."); *LaFontant*, 844 F. Supp. At 139 (suggestion of immunity letter issued for Haitian President Aristide); *Mugabe*, 169 F. Supp. at 259 (suggestion of immunity letter issued for President of Zimbabwe).

Friendly relations between the United States and Brunei Darussalam date from the 1800s. In 1850, the United States and Brunei Darussalam concluded a Treaty of Peace, Friendship, Commerce and Navigation, which remains in force today. More recently, in December 2002, His Majesty visited with President Bush in Washington. During this visit, His Majesty and President Bush issued a "Joint Statement Between the United States of America and Brunei Darussalam", which is attached as Exhibit D. This statement reaffirms both governments' mutual cooperation in many areas, including bilateral economic and trade cooperation, a bilateral defense relationship, and a mutual commitment to the global war on terrorism.

Suggesting the immunity of His Majesty and the Crown Prince is, in our judgement, in the foreign policy interests of both the United States and Brunei Darussalam. Permitting the pending litigation to proceed against His Majesty and the Crown Prince would, by contrast, be incompatible with those interests. Accordingly, the Government of Brunei Darussalam respectfully

requests that the United States suggest the immunity of both His Majesty and the Crown Prince at the earliest possible time.

The Ministry of Foreign Affairs and Trade avails itself of this opportunity to renew to the Embassy of the United States of America in Bandar Seri Begawan the assurances of its highest consideration.

End text of GOB diplomatic note.

SKODON